

1 Volume: I
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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF MASSACHUSETTS
6 - - - - - x
7 MICHELLE C. THOMPSON,
8 Plaintiff,
9 v. DOCKET NO. 0
10 BLOCKBUSTER, INC., and
11 JAY WELLS, individually,
12 Defendants

15 DEPOSITION OF DIANNE C. SIRARD
16 Thursday, June 1, 2006
17 9:28 a.m.
18 Law Offices of James G. Gilbert
19 15 Front Street
20 Salem, Massachusetts 01970
21
22
23 Reporter: Carol A. Pagliaro, CSR/RPR/RMR
24

1 A P P E A R A N C E S:

2

3 LAW OFFICES OF JAMES G. GILBERT

4 By James G. Gilbert, Esq.

5 15 Front Street

6 Salem, Massachusetts 01970

7 978.744.9800

8 Counsel for the Plaintiff

9

10 BINGHAM McCUTCHEN

11 By Douglas T. Schwarz, Esq.

12 399 Park Avenue

13 New York, NY 10022-4689

14 212.705.7437

15 Counsel for the Defendants

16

17 ALSO PRESENT: Elizabeth B. Neybert

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	I N D E X	
2	EXAMINATION OF:	PAGE
3	Dianne C. Sirard	
4	By Atty. Gilbert	4, 7
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11	E X H I B I T S	
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17	*Original exhibits retained by Atty. Gilbert	
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1 P R O C E E D I N G S

2 Stipulation

3 It is stipulated by and between counsel for the
4 respective parties that all objections, except as to
5 form of the question, are reserved until the time of
6 trial, as are Motions to Strike. It is further
7 stipulated that signing the deposition before a
8 Notary Public is waived and that the deposition may

09:27:33 9 be signed under the pains and penalties of perjury.

09:27:33 10 (Documents marked as Exhibit 1 and 2

09:27:36 11 for identification.)

12 DIANNE C. SIRARD

13 a witness called for examination by counsel for the
14 Plaintiff, being first duly sworn, was examined and
15 testified as follows:

16 DIRECT EXAMINATION

09:27:58 17 BY ATTY. GILBERT:

09:28:00 18 Q. Could you state your full name and address

09:28:02 19 for the record?

09:28:04 20 A. Dianne Sirard, 82 Wyman Road, Billerica,

09:28:04 21 Mass. 01821.

09:28:12 22 Q. Good morning, Ms. Sirard.

09:28:12 23 A. Good morning.

09:28:13 24 Q. I'm here to take your deposition. You

09:28:15 1 received a copy of a subpoena. Do you recognize
09:28:20 2 Deposition Exhibit No. 2?
09:28:21 3 A. Yes.
09:28:22 4 Q. Is that an accurate copy of the subpoena you
09:28:25 5 received?
09:28:26 6 A. Yes.
09:28:58 7 ATTY. GILBERT: Before we begin, the
09:29:02 8 Plaintiff objects to the presence of Beth Neybert at
09:29:08 9 this deposition. Ms. Neybert is a fact witness in
09:29:10 10 this matter. Her testimony, in fact, is a key part
09:29:15 11 of this litigation. There are a number of witnesses
09:29:23 12 who will be testifying, some of whom will be
09:29:28 13 disputing the testimony of Ms. Neybert.
09:29:32 14 The Plaintiff objects to Ms. Neybert's
09:29:36 15 presence and believes that Ms. Neybert is here for
09:29:43 16 the purpose of intimidating the witness, and I'd
09:29:49 17 like to ask the witness a couple of questions for
09:29:52 18 the record with respect to the presence of Ms.
09:29:55 19 Neybert.
09:30:01 20 ATTY. SCHWARZ: Let me just respond to
09:30:03 21 that, because it seems to me, and obviously you will
09:30:10 22 make whatever record you want to make, it seems to
09:30:10 23 me you either take the deposition or not.
09:30:17 24 First of all, Ms. Neybert's deposition

09:30:20 1 has been taken over a lengthy 2-day period, so that
09:30:27 2 is clear. You have had a chance to ask her anything
09:30:33 3 you want to ask her.

09:30:33 4 Second of all, the company is entitled
09:30:35 5 to have a representative attend depositions, and Ms.
09:30:38 6 Neybert is that representative and has attended
09:30:42 7 other depositions in that capacity, and so there is
09:30:47 8 no basis for the objection, and if, indeed, we do
09:30:54 9 have to proceed through motions and so forth, we
09:30:58 10 will -- I mean, I think it's a completely
09:31:01 11 inappropriate objection and we will ask for our
09:31:05 12 costs of resolving it and fees. Go ahead.

09:31:12 13 ATTY. GILBERT: I'd note under the Rules
09:31:12 14 of Civil Procedure seeking a Protective Order for
09:31:18 15 the exclusion of someone from a deposition is an
09:31:18 16 entirely appropriate and recognized motion to make.

09:31:20 17 ATTY. SCHWARZ: But not after you have
09:31:21 18 gotten everybody to come to the deposition site and
09:31:26 19 spend money and time to do that when certainly this
09:31:32 20 issue could have been anticipated.

09:31:35 21 ATTY. GILBERT: I think the defendants
09:31:38 22 are well aware of the situation here, and I don't
09:31:42 23 think it requires any further exposition from me.

09:31:48 24 ATTY. SCHWARZ: Let me say one other

09:31:48 1 thing. I'm not putting my substantive -- I'm
09:31:54 2 reserving my substantive arguments why it is
09:31:58 3 completely appropriate to have Ms. Neybert here. I
09:32:03 4 don't see any value, and, in fact, I don't want to
09:32:06 5 put them on the record at this point with the
09:32:10 6 witness present, but go ahead.

09:32:10 7 EXAMINATION, cont'd

09:32:12 8 BY ATTY. GILBERT (CORRECTION BY JGG 06-02-2006):

09:32:17 9 Q. Do you know Ms. Neybert?

09:32:17 10 A. Yes.

09:32:17 11 Q. Do you have any concerns regarding her
09:32:20 12 presence here today at this deposition?

09:32:21 13 A. Yes. I'm uncomfortable. I think it is next
09:32:25 14 to harassment. I have a past with her that wasn't
09:32:30 15 very enjoyable at an unemployment hearing I went
09:32:31 16 through, that I don't need to have somebody sitting
09:32:34 17 here -- a representative of the company would be
09:32:36 18 fine, but it should be somebody else.

09:32:40 19 If we maybe didn't have a past, it might
09:32:43 20 be different, but it makes me extremely
09:32:46 21 uncomfortable, and I believe it's done to intimidate
09:32:49 22 me.

09:32:50 23 Q. Do you think Ms. Neybert's presence would
09:32:51 24 have an impact on your ability to give testimony?

09:32:59 1 A. Yes.

09:32:59 2 Q. How do you think it would impact your

09:32:59 3 ability to give testimony?

09:32:59 4 A. I think it's an intimidation move. I think

09:33:04 5 it's here to say we are going to try to make you

09:33:05 6 uncomfortable so you can't think straight, so we can

09:33:08 7 intimidate you, and I have every right to feel how I

09:33:11 8 feel, and that is how I feel about it.

09:33:15 9 ATTY. GILBERT: Based on the witness's

09:33:16 10 representations and the concerns of the Plaintiff

09:33:20 11 regarding the presence of Ms. Neybert, I will

09:33:21 12 suspend the deposition at this point, and the

09:33:24 13 Plaintiff will move for a Protective Order to

09:33:29 14 exclude Ms. Neybert from this and future fact

09:33:32 15 witness depositions.

09:33:40 16 ATTY. SCHWARZ: All right. I will

09:33:42 17 reserve -- well, you know, I guess, do you mind if I

09:33:54 18 ask a couple of questions?

09:33:55 19 ATTY. GILBERT: I don't really think

09:33:57 20 it's appropriate.

09:33:58 21 ATTY. SCHWARZ: You object to me asking

09:33:59 22 questions?

09:34:00 23 ATTY. GILBERT: I do.

09:34:01 24 ATTY. SCHWARZ: Then I won't ask any

09:34:02 1 questions. I want it on the record, though, that I
09:34:06 2 would like to ask questions. I'm here ready,
09:34:09 3 willing, and able to ask questions.

09:34:11 4 ATTY. GILBERT: Well, the witness has
09:34:12 5 already indicated that she doesn't want to proceed
09:34:14 6 with the deposition. What is the nature of the
09:34:16 7 questions you are seeking to ask?

09:34:18 8 ATTY. SCHWARZ: I'm seeking to ask
09:34:20 9 questions about the witness's basis for not wanting
09:34:24 10 to proceed.

09:34:42 11 ATTY. GILBERT: Well, we already
09:34:44 12 explored that issue. The witness indicates she is
09:34:47 13 intimidated. I'm unclear as to what further
09:34:51 14 information you need from the witness that she has
09:34:54 15 not already presented.

09:35:02 16 ATTY. SCHWARZ: If you say that you are
09:35:05 17 going to ask the Court to make a ruling on this, I'd
09:35:06 18 like to ask the witness about the basis on which she
09:35:12 19 claims to be intimidated.

09:35:25 20 ATTY. GILBERT: The witness has
09:35:25 21 indicated that -- she indicated a past history with
09:35:30 22 Ms. Neybert and specifically cited an issue with
09:35:33 23 respect to the unemployment hearing that she
09:35:37 24 attended at which Ms. Neybert represented the

09:35:42 1 company and opposed her unemployment. Are you
09:35:46 2 asking whether or not there is anything in addition
09:36:00 3 to that?

09:36:00 4 ATTY. SCHWARZ: I'm not going to allow
09:36:00 5 you to filter my questioning. If you want to
09:36:00 6 essentially stop the deposition and instruct the
09:36:01 7 witness not to answer my questions, then go ahead
09:36:05 8 and do that. This is a civil, and I say with a
09:36:08 9 small c, proceeding. You know, I'm not going to do
09:36:17 10 any more than state my request and my objection, and
09:36:21 11 if you are saying don't go any further, if you are
09:36:24 12 saying to the witness, Don't say anything, then we
09:36:28 13 are done, and we will go to court.

09:36:31 14 ATTY. GILBERT: I'm not in a position to
09:36:34 15 instruct the witness not to answer. She is not my
09:36:34 16 client, she is a fact witness, so I can't, in my
09:36:39 17 mind, instruct the witness whether or not to answer
09:36:42 18 a question, and I'm not, in fact, instructing the
09:36:44 19 witness.

09:36:47 20 I think you put the request to me. If
09:36:47 21 you are requesting from me, I don't see any need to
09:36:49 22 it.

09:36:50 23 You are here, if you want to ask some
09:36:52 24 questions and you insist on doing so, I don't see

09:36:55 1 any basis by which I can prevent you from doing so.

09:36:55 2 EXAMINATION

09:37:04 3 BY ATTY. SCHWARZ:

09:37:04 4 Q. Good morning, Ms. Sirard?

09:37:06 5 A. (Nod.)

09:37:06 6 Q. My name is Doug Schwarz, and I represent the

09:37:11 7 Defendants in this case, Blockbuster is one of them

09:37:16 8 and Jay Wells is the other, and I understand that

09:37:23 9 you have said that you don't want to go forward and

09:37:27 10 testify today.

09:37:37 11 Other than generally speaking, something

09:37:39 12 about an unemployment hearing, what is the specific

09:37:42 13 reason that you are not going to agree to provide

09:37:47 14 testimony today?

09:37:47 15 ATTY. GILBERT: Objection.

09:37:48 16 A. I think I already stated that, and I'm not

09:37:50 17 going to repeat myself. I am uncomfortable, and

09:37:58 18 that is exactly why. I went through an unemployment

09:37:58 19 hearing. Beth can fill you in on the whole hearing,

09:37:59 20 because she was involved with it, and any

09:38:02 21 information about the details of the hearing, you

09:38:05 22 can talk to Beth.

09:38:06 23 Q. What I'd like to ask you, though, is, other

09:38:11 24 than attending the hearing and speaking at the

09:38:15 1 hearing on behalf of Blockbuster, was there anything
09:38:20 2 else that Ms. Neybert did that causes you to feel
09:38:20 3 uncomfortable?

09:38:27 4 A. No, what happened at the hearing, that is
09:38:29 5 involved with the hearing, is what I'm saying.

09:38:35 6 Q. You are talking about testimony that Ms.
09:38:39 7 Neybert gave at the hearing?

09:38:40 8 A. Correct.

09:38:41 9 Q. Anything else?

09:38:42 10 A. No.

09:38:43 11 Q. Did she say anything to you walking out of
09:38:45 12 the hearing?

09:38:46 13 A. No.

09:38:47 14 Q. Going into the hearing?

09:38:48 15 A. No.

09:38:49 16 Q. Other than the hearing itself, did she say
09:38:55 17 anything to you that is causing you concern?

09:38:58 18 A. We worked together for a while; issues that
09:38:59 19 came up at work that involved -- that were brought
09:39:02 20 up in the hearing were also part of it, and I'm very
09:39:05 21 uncomfortable having this conversation with you.

09:39:10 22 Q. As you can imagine, I have a number of
09:39:12 23 questions I want to ask you this morning, and I'd
09:39:17 24 like to continue asking them, and are you saying

09:39:21 1 that you will not answer them?

09:39:25 2 A. I'm saying I'm uncomfortable speaking with

09:39:26 3 her in the room. If you have another

09:39:27 4 representative, that is fine, but other than that,

09:39:29 5 I'm very uncomfortable. I think it's harassment.

09:39:33 6 If you want to me to keep repeating myself, I will.

09:39:34 7 Q. No, I don't want you to keep repeating

09:39:37 8 yourself, I just want to be clear, because

09:39:39 9 eventually, apparently, a judge is going to have to

09:39:42 10 make a decision about this, and I just want the

09:39:44 11 judge to be able to understand what the basis is on

09:39:48 12 which you are objecting to having the company

09:39:51 13 representative here.

09:39:52 14 A. I'm sure Jim will explain it to them.

09:39:56 15 Q. But it's really your issue, because you are

09:39:58 16 here -- you understand that you are here under a

09:40:02 17 subpoena which is issued by Mr. Gilbert, but it's

09:40:08 18 issued in the name of the Court; you understand

09:40:10 19 that?

09:40:10 20 A. Correct.

09:40:11 21 ATTY. GILBERT: Objection.

09:40:13 22 Q. And the fact that you are uncomfortable

09:40:22 23 usually isn't enough of a reason not to testify in

09:40:24 24 response to a subpoena?

09:40:26 1 ATTY. GILBERT: Objection.

09:40:28 2 A. I feel it is a form of harassment.

09:40:38 3 Q. What I'd like to do is, I'd like to ask you

09:40:43 4 some questions about the time period when you were

09:40:45 5 working at Blockbuster.

09:40:47 6 A. I'm not going to answer any more of your

09:40:50 7 questions. I have already stated that I'm

09:40:53 8 uncomfortable, and I feel like you are just trying

09:40:53 9 to continue to ask me questions, and if you want to

09:40:56 10 continue it, I'm telling you I feel like you are

09:40:58 11 harassing me.

09:41:00 12 Q. At this point then, and on that basis, I

09:41:04 13 will not ask you any further questions, and we will

09:41:10 14 -- and I want to assure you that I respect the

09:41:14 15 position that you are taking, and this will just

09:41:20 16 have to get worked out through the legal system .

09:41:25 17 ATTY. SCHWARZ: So at this point I don't

09:41:27 18 see any reason to go further, Jim, and I think we

09:41:40 19 are going to have to suspend.

09:41:40 20 ATTY. GILBERT: On that basis we will

09:41:41 21 suspend pending Plaintiff's filing of the Motion for

09:41:44 22 Protective Order relative to the attendance of Ms.

09:41:50 23 Neybert at this particular deposition and perhaps

09:41:52 24 future fact depositions.

09:41:56 1 That being said, we are going to suspend
09:41:59 2 the deposition at this point. Ms. Sirard, thank you
09:42:02 3 for coming. We will be in contact with you about
09:42:06 4 the rescheduling of this deposition.

09:42:07 5 I don't have anything further. Doug, do
09:42:09 6 you have anything?

09:42:10 7 ATTY. SCHWARZ: No.

8 (Whereupon, the record was closed at
9 9:42 a.m.)

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1 C E R T I F I C A T E

2 I, DIANNE C. SIRARD, do hereby certify that I have
3 read the foregoing transcript of my testimony, and
4 further certify that said transcript is a true and
5 accurate record of said testimony (with the
6 exception of the following corrections listed
7 below):

8 Page Line Correction/Reason

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17

18

19 Signed under the pains and penalties of perjury
20 this _____ day of _____, 2006.

21

22 _____

23 DIANNE C. SIRARD

24

1 Commonwealth of Massachusetts
2 Suffolk, ss.

3 I, Carol A. Pagliaro, Registered Professional
4 Reporter and Notary Public in and for the
5 Commonwealth of Massachusetts, do hereby certify
6 that DIANNE C. SIRARD, the witness whose deposition
7 is hereinbefore set forth, was duly sworn by me and
8 that such deposition is a true record of the
9 testimony given by the witness to the best of my
10 skill and ability.

11 I further certify that I am neither related to,
12 nor employed by, any of the parties in or counsel to
13 this action, nor am I financially interested in the
14 outcome of this action.

15 In witness whereof, I have hereunto set my hand
16 and seal this 1st day of June, 2006.

17

18

19

20 Carol A. Pagliaro, RMR

21 Notary Public

22 CSR No. 123293

23 My commission expires

24 April 28, 2011